

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/11/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-007615

FILED: _____

STATE OF ARIZONA, et al.

DIANE GUNNELS ROWLEY

v.

TRAVIS RAY NUELS, et al.

EDITH M LUCERO

PAMELA C GUTIERREZ
SOUTH PHOENIX JUSTICE COURT
217 E OLYMPIC DRIVE
PHOENIX AZ 85040-0000
PHX JUSTICE CT-SOUTH
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this Special Action pursuant to Arizona Constitution Article IV, Section 18.

This matter has been under advisement since the time of oral argument on June 17, 2002. At that time this court accepted jurisdiction of this case and made a specific finding that the issues presented by Petitioner were of sufficient state-wide interest that special action jurisdiction was appropriate. This Court has considered the pleadings submitted by the parties and the oral argument of counsel.

Travis Ray Nuels was charged in the South Phoenix Justice Court with a misdemeanor charge of Interfering with Judicial Proceedings, in violation of A.R.S. Section 13-2810(A)(2). On March 13, 2002, Nuels filed a motion requesting a jury trial.

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On April 1, 2002, the South Phoenix Justice Court granted the Motion for a Jury Trial and scheduled the matter for a trial on June 21, 2002. By this court's order of June 17, 2002 that order of the Justice Court has been stayed pending disposition of the issues presented in the instant Petition for Special Action now before the court.

The Petitioner contends that the South Phoenix Justice Court (the Honorable Pamela C. Gutierrez) erred in granting a jury trial to Travis Nuels on the charge of Interfering with Judicial Proceedings. The Petitioner further contends that there is no authority for the Respondent court's order granting a jury trial on the charge of Interfering with Judicial Proceedings, and that is a matter of law, persons charged with Interfering with Judicial Proceedings are not entitled to a jury trial.

This appears to be a case of first impression involving A.R.S. Section 13-2810. This Court was unable to discover any recorded cases in Arizona dealing with the issue of the right to jury trial to persons charged with Interfering with Judicial Proceedings.

The Federal law is not helpful in regard to this issue. The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right to a jury trial.¹ Arizona has in fact, extended the right of a jury trial much further than that guaranteed by the United State Constitution.² The Arizona Supreme Court in McDougall³, listed four factors to evaluate in determining the right to a jury

¹ Lewis v. United States, 518 U.S. 322, 116 S.Ct. 2163, 135, L.Ed.2d 590 (1996); Blanton v. North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989).

² State v. ex rel. McDougall v. Strohson, 190 Ariz. 120, 945 P.2d 1251 (1997).

³ Id.

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trial in the State of Arizona. The first three factors are found in Rothweiler v. Superior Court⁴:

1. The length of possible incarceration;
2. The moral quality of the act charges (sometimes referred to as the "moral turpitude" issue;
3. Its relationship to common law crimes.

The fourth consideration comes from State ex rel. Dean v. Dolny⁵ and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

The length of possible incarceration in this case is six (6) months imprisonment; the maximum possible sentence for all class 1 misdemeanors. This factor is not controlling as Defendants charged for other class 1 misdemeanors such as assault or disorderly conduct are not entitled to trials by jury.⁶

An evaluation of the moral quality of the act charged in this case requires this Court to consider those facts which form the basis for the criminal charge. Nuels was accused of violating a Domestic Violence Order of Protection issued by the Maryvale Justice Court at the request of his wife. Nuels and his wife were in the process of obtaining a divorce. The Domestic Violence Order of Protection prohibited Nuels from contacting his wife in person, by telephone, or in writing. On May 4, 2001, Nuels telephoned his wife at work. Nuels' wife asked him not to call and hung up on him, but Nuels continued making telephone calls to her place of employment at least ten (10) times that date.⁷

⁴ 100 Ariz. 137, 410 P.2d 479 (1996).

⁵ 161 Ariz. 297, 778 P.2d 1193 (1989).

⁶ Goldman v. Kautz, 111 Ariz. 431, 531 P.2d 1138 (1975); Bruce v. State, 126 Ariz. 271, 614 P.2d 813 (1980); O'Neill v. Mangum, 103 Ariz. 484, 445 P.2d 843 (1968).

⁷ See Petition at page 3; and see Response to the Petition at page 2.

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It is clear from the facts alleged that Nuels was not charged with any type of crime involving dishonesty, fraud, or any other type of crime that involved a deficient moral character. Therefore, this Court concludes the crime of Interfering with Judicial Proceedings is not of such a moral quality that a jury trial would be required.

In considering the relation of the crime, Interfering with Judicial Proceedings to common law crimes, this Court notes the similarity of the crime charged to criminal contempt. A.R.S. Section 13-2810 is, however, a separate crime from criminal contempt. This offense of Interfering with Judicial Proceedings had no common law antecedents.

There are no additional or unusual serious or grave consequences that result from a conviction of Interfering with Judicial Proceedings different from any other misdemeanor offense.

This Court, therefore, concludes that the Respondent trial judge erred in granting the Real Party in Interest's Motion for a Jury Trial for the crime of Interfering with Judicial Proceedings. This Court further determines that the charge Interfering with Judicial Proceedings does not entitle the Real Party in Interest in this case to a jury trial.

IT IS THEREFORE ORDERED vacating the Respondent lower court's order of April 1, 2002 setting Travis Nuels' case for a jury trial.

IT IS FURTHER ORDERED terminating the Stay order in this case 30 days from this date.

IT IS FURTHER ORDERED remanding this matter back to the Respondent court with instructions to set this matter for a non-jury bench trial.

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July 11, 2002

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT